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THE PUBLICATIONS OF THE SELDEN SOCIETY. Volume XXII. For the year 1907. Year Books of Edward II. Volume IV: 3 & 4 Edward II; 1309-1311. London: Bernard Quaritch. 1907. pp. xlv, 263. 4to.

This volume is in a way a memorial to the late Frederick William Maitland. A recent portrait of him forms the frontispiece, and the preface contains a brief sketch of his life. The text was prepared by him before his death with his usual minute care, after a laborious collation of the manuscripts (thirteen in number for this year); but the Introduction was prepared by Mr. G. J. Turner. The excellence of his work gives us hopeful assurance of the continuance of this invaluable series. In the Introduction several interesting questions are discussed and the evidence in favor of the conclusion reached is well marshalled. The appointment of judges is considered, and the conclusion reached that they were appointed partly from among lawyers in practice at the bar and partly from among the clerks of the courts. An interesting discovery is that the Common Bench in the thirteenth century sat in two divisions,—one for settling the pleadings (that is, for determining questions of law), and the other for trying issues; and that the judges were permanently assigned to one division or the other.

As to the cases here reported, perhaps the most interesting fact is that nearly four-fifths are newly published, so imperfect was the manuscript from which Maynard's Year Book was printed. A few points of special interest may be mentioned. The growing recognition of precedent as establishing the law is indicated by a statement of Chief Justice Bereford (p. 161): "By a decision on this avowry we shall make a law throughout all the land." The picturesque method of speech which made Bereford address a persistent lawyer, "You wicked caitiff" (p. 134) would arouse a certain envy in many a modern judge whom custom denies such freedom of expression. On one occasion a jury was unable to agree. Stanton thereupon ordered them to be put in a house till Monday without food and drink. But on the same day, about vesper-time, they agreed, and thereupon they were allowed to eat, the verdict, however, not being returned until the Monday (p. 188). An attorney was imprisoned for abuse of process in suing out process merely for delay, and was not allowed bail; Stanton charging him to "stay in gaol until you are well chastised" (p. 195). An attempt to hold a bailiff on a writ of waste was not allowed, on the ground that the proper action against him was account (p. 136).

Most of the cases are of real actions, and possess only an historical interest to students of law. There is, however, a case reported from the King's Bench of ravishment of wife, in which seisin as wife was recognized as giving the husband *de facto* an indisputable standing in the king's courts (*Gyse v. Baudewyne*, p. 4). In the case of *Petstede v. Marreys*, in the King's Bench (p. 29), a woman to whom one third of the beasts in a park had been assigned in dower was allowed to maintain trespass for taking the beasts against the person seised of the land; the court saying that she was "seised of the third part of the profit *par my et par tout*," and could have no other writ.

Altogether this is one of the most interesting and valuable of the series. It is to be greatly hoped that the lamented death of Professor Maitland will cause no interruption in the publication of the succeeding years.

J. H. B.

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THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. By Frederick H. Cooke. New York: Baker, Voorhis and Company. 1908. pp. xcii, 302. 8vo.

This is a thoughtful and useful book. Although the subject is difficult and the decisions are irreconcilable, the author has not taken refuge in quotations from opinions or in summaries of decisions. On the contrary, he has attempted to derive from the words of the Constitution and from the better-reasoned cases a consistent theory. Such an undertaking is obviously dangerous, for the reader must be protected against believing that the author's theory always represents unquestioned law; but the author has fully appreciated the danger and has fur-

nished the necessary protection, simultaneously developing his theory and presenting clearly the actual decisions. His independence is shown throughout. For example, he calls the "original package" doctrine, notwithstanding the weight of Marshall's name, anomalous and absurd (§ 17); and he questions *Swift v. United States* (§ 24); and he believes that decisions commonly based upon the Commerce Clause are sometimes properly explainable by the federal admiralty and maritime jurisdiction (§§ 26a, 43), or by the position of the Indians as wards of the nation (§ 30); and he disapproves both *Bowman v. Chicago & Northwestern Railway Co.* and *In re Rahrer* (§§ 98-99). These are only a few instances of the free and thoughtful discussion which gives the book a strong claim to respect. The treatment of taxation is especially acute (§§ 108-116). The whole volume deserves to be read by any one able and willing to read attentively; but the author's mode of thought and of expression will not attract a careless or hasty reader. For the lawyer who is simply in search of authorities, the volume performs the great service of collecting in the foot-notes—usually with some indication of the peculiarities of each case—an unusually complete collection of federal and state decisions.

E. W.

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**GREAT AMERICAN LAWYERS.** Edited by William Draper Lewis. Volumes I-V. Philadelphia: The John C. Winston Company. 1907-1908. pp. xxxviii, 472, 533, 560, 546, 531. 8vo.

In the preface to the first volume of the *Great American Lawyers* Professor Lewis says: "The aim of this work is not to present a mere collection of biographical sketches of great American judges and lawyers of the past, but to give a history of the development of legal institutions. . . ." Further, in outlining the field to be covered by the biographies he has divided the whole into four distinct classes—members of the legal profession who have a permanent national reputation; those who have permanently impressed the jurisprudence of their respective states; those who have "through their teaching or by their writings produced, either a distinct effect on the law, or have been instrumental in stimulating new methods of legal thought and work"; and those whose lives make the collection "give as complete a history as possible of the legal profession in America, and the development of our legal institutions."

Although a collection covering such a large field should be looked upon as a unit and should not be judged by a fragment, the five volumes which have already appeared seem a fair basis upon which to form an opinion as to the probable success of the editor's undertaking. To the extent of these first volumes Professor Lewis has shown steadfast adherence to his purpose and has proceeded far enough to promise the complete fulfillment of his project as outlined. The biographies as a whole are so arranged as to show the historical development of the law in America both in the wide field of constitutional law and in the narrower but no less interesting field of the jurisprudence of many of the individual states. As a result of the necessary limitations in space each sketch is of much less extensive scope than the usual historical biography. Nevertheless, within the prescribed limits it has been possible to give a complete picture of the position of each individual in the legal world, large or small, and at the same time to portray the human characteristics of each man in vivid and attractive fashion. Every member of the legal profession, in active practice or in the field of legal instruction, will undoubtedly read the collection with interest and enjoyment. Those brilliant members of the bar, the prominent features of whose lives every reader of American history knows to some extent, are depicted in a new light—that of their legal attainments and their position at the bar. Of such men may be mentioned Patrick Henry, John Marshall, Daniel Webster. The sketches of those other lawyers, less well known outside the legal profession though of eminence in their particular field, such as William Tilghman, James Kent, Henry Wheaton, Lemuel Shaw, Reverdy Johnson, Charles O'Connor, David Dudley Field, are also of great interest to all and